UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

ALL STATE POWER-VAC, INC., Respondent	Case Nos.:	29-CA-28264 29-CA-28351 29-CA-28394 29-CA-28556 29-CA-28594 29-CA-28637 29-CA-28683
and		
LABORER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 78, Charging Party		

ALL STATE POWER-VAC, INC., Employer	Case No.	29-RC-11505
and		
LABORER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 78, Petitioner		

GENERAL COUNSEL'S REQUEST FOR SPECIAL PERMISSION TO APPEAL AND REQUEST TO OVERRULE ADMINISTRATIVE LAW JUDGE'S RULING

Pursuant to the Board's Rules and Regulations, Section 102.26, Counsel for the General Counsel hereby requests special permission to appeal Administrative Law Judge Raymond P. Green's denial of General Counsel's motion for recusal and for an Order removing Judge Green as the administrative law judge in this matter.

Counsel for the General Counsel's motion for recusal was based upon Judge Green's demonstrated bias and pre-disposition against union employee applicants (also known as "salts"), in previous Board cases and in this matter, and his deliberate interference with Counsel for the General Counsel's presentation of evidence and witnesses in the instant matter.

On March 17, 2008, a hearing opened in the above captioned matter before Judge Green based on charges filed by Local 78, Asbestos, Lead & Hazardous Waste Laborers, Laborers International Union of North America, herein called the Union,

against Allstate Power Vac, Inc., herein called Respondent. On March 18, 2008, Counsel for the General Counsel made a motion to Judge Green to recuse himself, on the record and then in writing as an exhibit (GC Ex.23). The Judge denied General Counsel's Motion to Recuse and its Request to Adjourn to Pursue a Special Appeal to the Board. General Counsel has not yet rested and anticipates a minimum of one more week of hearing. On March 21, 2008, Judge Green adjourned until April 8, to allow General Counsel to pursue its Appeal.

Specifically, Judge Green should be removed from hearing the above cases for the following reasons:

1) Judge Green Has Repeatedly Demonstrated Bias Against Salting Cases, and That Bias Has Been Well-Documented by the Board.

2) Judge Green Improperly Interfered With The General Counsel's Presentation of Its Case.

   (a) Judge Green Made Inappropriate Comments Against Salts In The Instant Matter Indicating His Continued Bias.

   (b) Judge Green Interfered With the Testimony of General Counsel Witness Eli Kent.

   (c) Judge Green Threatened Not to Allow General Counsel's Witnesses to Testify Unless Digital Recordings of Conversations with Respondent's Representatives Were Produced by The Union Prior to their Testimony.

   (d) Judge Green Inappropriately Assisted Respondent by Directing Respondent to Subpoena the Recordings.

   (e) Judge Green Interfered with General Counsel's Spanish-Speaking Witness, Further Illustrating His Lack of Impartiality.

For all of these reasons, more fully discussed below, the Judge's demonstrated bias to salts has poisoned the entire case to the point that the issuance of a fair and impartial decision would be impossible.

The standard for disqualifying a Judge is set forth in the Board's Rules and Regulations at Section 102.37,

> Any party may request the administrative law judge, at any time following his designation and before filing his decision, to withdraw on grounds of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts a timely affidavit setting forth in detail the matters alleged to constitute grounds for disqualification. ...If the administrative law judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling, and proceed with the hearing....

Counsel for the General Counsel requests that Judge Green's ruling denying the General Counsel's Motion to Recuse be overruled and Judge Green be disqualified for the reasons described below.

1) <u>Judge Green Has Repeatedly Demonstrated Bias Against Salting Cases, and That Bias Has Been Well-Documented by the Board.</u>

The most commonly advanced ground for disqualification is a judge's personal bias. Based on earlier decisions issued by Judge Green, it is beyond peradventure that Judge Green has a bias against union employee applicants.

There is no dispute that the organizing tactic of "salting" is protected under the National Labor Relations Act. In a unanimous decision in *Town & Country Electric,* 116 S.Ct. 450 (1995), enf'ing 309 NLRB 1250 (1992), the Supreme Court held that union organizers ("salts") are properly considered employees under the Act. Although the Circuits had previously been split on the issue, with *Town & Country*, the Court found the Board's interpretation of "employee" to include salts was lawful and consistent with the language of the Act, its legislative history, Supreme Court precedent, and the purposes of the statute. After *Town & Country*, the status of salts as employees protected by the Act is no longer in question.

Although *Town & Country* resolved that salts are indeed employees under the Act, Judge Green has repeatedly demonstrated a personal hostility toward the practice of salting. Shortly after the Court decided *Town & Country*, the Board issued its decision in *Iplli, Inc.*, 321 NLRB 463 (1996)(Gould, Browning, Cohen), affirming Judge Green's reluctant finding that an employer violated the Act by terminating a union salt. Although

Judge Green had written his decision prior to the Court's decision in *Town & Country*, the applicable Board standard was the same standard the Court would subsequently approve. In his decision, Judge Green indicated he was "bound by Board precedent," but cited to the position of the 8th Circuit, in arguing against the protection of salts under the Act. *Iplli* at 467. Additionally, Judge Green discussed, at length, the goals of the union's salting campaign, and stated his personal distaste for salting, a discussion the Board found "irrelevant" in finding the violations under the Act. *Iplli* at 467 and 463 fn. 1.

Judge Green subsequently reiterated his personal hostility to salting in a subsequent case, *M.J. Mechanical Services, Inc.*, 324 NRLB 812 (1997)(Gould, Fox, Higgins). In that case, the Board reversed Judge Green and chastised him for his bias in refusing to find violations where salts were involved, and stated:

> It is clear that the judge's personal opinion of union "salting" rather than a close review of the record informed his conclusions. We disavow as irrelevant both the judge's personal views about "salting" and the conclusions he reached based upon those views. See *Iplli, Inc.*, 321 NLRB 463 fn. 1 (1996), in which the Board similarly disavowed Judge Green's discussion of the goals of the union's "salting" program. *M.J. Mechanical Services* at 813 fn. 12.

The Board further stated that it "reject[ed] the judge's reasoning as illogical and unsupported by the record," and went into detail criticizing Judge Green's assessment of salting:

> The judge found that the Union's "salting" program was not designed to organize the Respondent, but was, instead, designed to "entrap" the Respondent into committing unfair labor practices, interfere with its business, lure its employees away to union signatory contractors, engage in acts of sabotage, and drive it out of the Rochester area. The judge described these activities as "tortious interference with business relations." ...We find nothing in the record to support the judge's conclusions about the "salting" in this case.
>
> For example, the judge relied on the fact that an employee left the Respondent's employ to enter the Union's apprenticeship program as support for his finding that the Union sought to drive the Respondent out of business. The record shows, however, nothing more than employees discussing the benefits of unionizing, which, in the industry involved in this case, include apprenticeship programs. That an employee decided to

> take advantage of such a program can hardly be called "luring" employees away from the Respondent and in no way translates into attempting to put the Respondent out of business. Further, the judge found that the "salting" program was designed to entrap the Respondent into committing unfair labor practices.
>
> Like most of the judge's other observations about the Union's "salting" program, this finding was based on little more than pure speculation. Assuming arguendo that the judge's speculation has any basis, we have nonetheless held that even if "salting" is intended in part to provoke an employer to commit unfair labor practices, that would not deprive employees of protection of the Act. *Godsell Contracting*, supra, 320 NLRB at 874. Finally, we find absolutely no evidence that the Union or employees engaged in or intended to engage in sabotage. In short, there is nothing in the record to support a finding that the "salting" in this case was a subterfuge used to further any purpose unrelated to organizing. *M.J. Mechanical Services* at 813-14.

The Board in *M.J. Mechanical Services* found that Judge Green acted improperly in his adjudication of salting allegations. Notwithstanding the Board's strong language in *M.J. Mechanical*, yet again in *Zeppelin Electric Company, Inc.*, 328 NLRB 452 (1999)(Fox, Liebman, Hurtgen), the Board had to reprimand Judge Green for his continued partiality in cases involving salting. Reversing Judge Green to find an employer had unlawfully threatened and terminated a salt, the Board stated that Judge Green made inappropriate statements about the discriminatee that were "pure speculation, and unsupported by the record evidence." *Zeppelin* at 452 fn. 3. The Board further criticized Judge Green's handling of the case and assumptions he made about the discriminatee:

> ...[Judge Green] assumed, based on his decisions in other cases, that because [discriminatee] Shanahan was a salt, he was trying to sabotage the Respondent's operations and was looking for a way to be fired. The Board, however, has repudiated this judge's assumptions about salting in *M.J. Mechanical Services*, supra, and *Ippli*, Inc., 321 NLRB 463 (1996). In *M.J. Mechanical Services*, supra at 813 fn. 2, the Board stated that "[I]t is clear that the judge's personal opinion of union 'salting' rather than a close review of the record informed his conclusion." The comment is equally applicable here. The record is devoid of any evidence that Shanahan's intended salting activity would have included attempts to be fired or to sabotage the Respondent's operations. Indeed, there is no evidence to support a finding that Shanahan's planned salting activities would involve any unprotected conduct. *Zeppelin* at 453.

The Board's final assessment of Judge Green's adjudication of *Zeppelin* acknowledged his refusal to approach the case impartially: "In sum, there is no basis for the judge's negative characterizations of [discriminatee] Shanahan's salting activity or of his findings concerning the Respondent's motivations toward Shanahan's conduct." *Zeppelin* at 454. The Board, in that case, found that Judge Green had interpreted facts not just to hurt the case of the discriminatee, but also to help exculpate the employer from its violations of the Act. As he had previously done before in *M.J. Mechanical Services*, and again in *Zeppelin*, Judge Green misapplied the law to intentionally dismiss the complaint because of his personal disagreement with the law.

As the Board has made clear in each of the above cases, Judge Green has decided salting cases – not with an impartial determination of fact and application of law – but with an agenda rooted in his own personal dislike of salting activity. While all judges might have personal opinions on matters of law, in regard to Judge Green, he has repeatedly demonstrated himself either unwilling or incapable of keeping his personal opinions from interfering with the fair adjudication of salting cases. As detailed below, in conducting the current case, Judge Green has again acted more like a partisan opponent of salting than as a fair-minded judge.

2) <u>Judge Green Improperly Interfered With the General Counsel's Presentation of Its Case.</u>

(a) <u>Judge Green Made Inappropriate Comments Against Salts In The Instant Matter Indicating His Continued Bias.</u>

In the instant case, Judge Green has shown his continued bias against salts and his disinterest in having to fairly consider the allegations related to salting. At one point during the hearing, Judge Green urged the General Counsel to limit the presentation of its case on the salting allegations. The Judge's urging came after he, as discussed below, had already inappropriately demonstrated that he was unwilling to fairly consider

the salting allegations. In the following conversation, the Judge pushed the parties to settle the salting allegations, while, at the same time chastised the General Counsel for putting in clearly relevant evidence, and indicated that, in his view, the salting allegations were not "real issues," and were "not going anywhere anyway":

> JUDGE GREEN: What I'm saying is, we're spending a lot -- it's not directed to you personally, or to them personally. **All I'm saying is, at this part of the case we're spending a lot of time on, and it seems to me that this aspect of the case is not going to go anywhere anyway.** As a practical matter we should be concentrating on Angel River, we should be concentrating on the three people who were discharged or suspended in October, and **that's who we should be spending our time and efforts**....(Tr. 642, lines 11-19, emphasis added)

Prior to the above, Judge Green engaged in a diatribe on the record, described below, further demonstrating his mindset on the salting allegations and referring again to the employee applicant that he had interrogated. Based on Judge Green's conduct, Counsel for the General Counsel made the appropriate objection, requested the Judge's recusal and submitted a written motion to the Judge. Judge Green denied General Counsel's motion without explanation. In response to General Counsel's motion, Judge Green stated that he still disagrees with the Board majority's comments made in *M.J. Mechanical*, supra, :

> This gives me a slight opportunity to express my disagreement with the comments made by the Board majority in M.J. If my memory serves me correctly, and it may not, the Sheet Metal Workers in that case had adopted the International Brotherhood of Electrical Workers salting program and manual. That manual was received in evidence and quoted at great length in Sullivan Electric, which is a JD decision, which is listed. So the conclusions that, assuming again for the sake of argument that I'm correct that the Sheet Metal Workers had adopted the IBEW salting manual, my speculations were based on facts. They weren't based on speculations. That's my opinion. (Tr. 409, lines 7-17)

This comment clearly establishes that Judge Green has not learned from his admonishment by the Board in *M.J. Mechanical*, supra, and rather than accepting that his decision was incorrect, is trying to justify it, and likely apply it, in the current case.

Further, "[J]udges must 'apply established Board precedent which the Supreme Court has not reversed' (citations omitted), leaving 'for the Board, not the judge, to determine whether that precedent should be varied.' *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984). Judge Green has signaled by this comment that he has no intention of doing as he is required in this salting case.

(b) Judge Green Interfered With the Testimony of General Counsel Witness Eli Kent.

As presented at trial, Union organizer Eli Kent and business agent Jorge Roldan testified they went together to apply as overt salts with the Employer. During Kent's testimony on the matter, an audio recording of their conversation with the Employer's agent was played in which Kent discussed filling out an application for employment:

> ELI KENT: Okay. Can I fill out an application for any other positions you have?
>
> OFFICE WOMAN: There's nothing open right now.
>
> ELI KENT: No, what about in the future?
>
> OFFICE WOMAN: Absolutely, just look to see -- we run ads in the paper all the time.
>
> ELI KENT: Okay. Then you won't -- you don't keep applications on file or anything?
>
> OFFICE WOMAN: Yeah -- no. I mean, I can -- I can take it if you would like to give it to me right now and I'll keep it on file but I'm not hiring for that. (Tr. 270)

Kent explained the woman's response indicated filling out an application "wouldn't have served a purpose." (Tr. 272, lines 5-7). Though the two applicants went to the Employer to apply, neither was shown an application. (Tr. 342, lines 11-12). Kent testified he was never shown an application, but would have accepted employment, had it been offered. (Tr. 272, lines17-18; 341, line 25-342:, line 4). Kent's partner Roldan testified he would have filled out an application had it been offered, and also would have

accepted employment. (Tr. 354, lines 12-17). Both men testified they never refused to fill out an application. (Tr. 342, lines13-14; 354, lines 3-8).

Nonetheless when the General Counsel sought to ask Kent to clarify his intent to complete an application, the Employer objected, and Judge Green intervened and indicated that he believed that Kent never intended to apply for employment.

(BY MR. CHILDERHOSE):

Mr. Kent, had you been given an application for the field technician position that morning what would you have done?

MR. R.M. ZISKIN: He's asked and answered already.

JUDGE GREEN: Yeah, but he didn't take –

MR. R.M. ZISKIN: He already -- he's already answered that he would take it. He's already testified –

JUDGE GREEN: It's a hypothetical. All right, **I'll allow him to give his opinion about it but his opinion is going to be contrary to what his testimony is.**

MR. R.M. ZISKIN: He's already testified –

MR. CHILDERHOSE: His intent.

JUDGE GREEN: **His intent was not to take it; that's what he said.**

MR. CHILDERHOSE: I don't think that's his –

JUDGE GREEN: All right, you can ask him. Fine.

MR. CHILDERHOSE: I don't think that's his testimony.

JUDGE GREEN: Well, okay, you don't think it is.

BY MR. CHILDERHOSE:

Did you intend to apply for a job that morning?

THE WITNESS: I intended to apply for a job. (Tr. 282-283, lines 12-25 and 1-8)

In the above exchange, Judge Green inaccurately and unreasonably formulated witness Kent's testimony to say that Kent did not intend to accept and complete an

application. When the Counsel for the General Counsel protested, Judge Green again insisted, contrary to any evidence, and contrary to the insistence of both of witnesses Kent and Roldan (Tr. 342, lines 13-14; 354, lines 3-8), that Kent had refused to complete an application with the Employer:

> MR. CHILDERHOSE: You restated Mr. Kent's testimony, we believe, inaccurately –
>
> JUDGE GREEN: Then the record –
>
> MR. CHILDERHOSE: -- and in a prejudicial way.
>
> JUDGE GREEN: Then the record will state what he said and I rule on what the witness says and what the record shows. **The other problem with Mr. Kent's testimony is that he basically refused to give an application,** but that's neither here nor there, I'm not ready to rule on Mr. Kent's situation as to whether or not the Employer refused to consider him for employment.
>
> MR. CHILDERHOSE: I don't think Mr. Kent did refuse to give an application and I don't think a fair –
>
> JUDGE GREEN: Well, then you're mischaracterizing his –
>
> MR. CHILDERHOSE: I don't think it's appropriate that that conclusion's already been reached. (Tr. 296-297)

In addition to insisting Kent did not intend to complete an application, Judge Green also insisted, without basis and contrary to what occurs on a daily basis, that Kent could not simultaneously maintain his position with both the Union and the Employer. In the following exchange, after lengthy questioning of witness Kent (not excerpted), rather than seeking clarification by Kent's own testimony, Judge Green again sought to confuse the issue and interjected his own opinion on the matter:

> JUDGE GREEN: Yeah, all right. I take it you didn't -- that you were not offered to take a leave of absence if you got this job at All State? Nobody offered to say, you know, "Well, if you go and work at All State I guess you're not going to be doing your other job at the Union?"
>
> THE WITNESS [KENT]: Yeah, nobody said that. It was just -- I mean, I was there under the assumption that had I got hired.

You know, I can't say that no one said that, but I was there under the assumption that had I gotten hired, if they wanted to put me to work that the Union would have -- that I would have gone to work for All State Power-Vac.

JUDGE GREEN: Okay.

DIRECT EXAMINATION (continued)
BY MR. CHILDERHOSE:

But the two aren't exclusive; are they?

JUDGE GREEN: **Yeah, they sure are, if he's busy at one job and you know, there's only so many hours in a day, in a week.**

MR. CHILDERHOSE: If his job is to organize and he's being an organizer taking a job somewhere else he's not quitting being an organizer, he's still the Union organizer.

JUDGE GREEN: Yeah, but as I understand his testimony he was involved more deeply and pretty involved in the asbestos industry.

MR. CHILDERHOSE: Let's ask the Witness if he had to resign from being an organizer to take a job elsewhere I don't think that's accurate.

JUDGE GREEN: Okay. Well, I asked him whether or not he had to take a leave of absence and he said he didn't know. Maybe it wasn't even talked about. (Tr. 287-288, lines 19-25 and 1-23)

Despite the Judge's insistence to the contrary, there was no evidence Kent could not work for both the Union and the Employer, and repeated applicant witnesses testified they would have maintained employment with the Union while working with the Employer. The Judge nonetheless set forth his baseless determination that Kent could not work for the Union and the Employer at the same time:

JUDGE GREEN: With respect to Mr. Kent, my present feeling, and I think it's the same feeling that I have presently as I had yesterday, is that based solely on his own testimony, if he had accepted full-time, indefinite employment with All State, the probability is very small that he would have been able to complete or continue his functions in his present assignment as the director of organizing in a separate industry, namely the asbestos removal industry. Now, of course, you know, it may very well be that the Union would rather have him working at All State than try to organize the asbestos industry, which as he testified was a rather important job. But I just think it's not all that probable. I feel that way

today and I felt that way yesterday. I, frankly, don't know what I said in the transcript. (Tr. 410, lines 13-25).

Review of the transcript clearly establishes that the Judge was trying to influence and misrepresent Kent's testimony to facilitate the dismissal of the salting allegations under the Board's recent decision in *Toering Electric*, 351 NLRB No. 18 (2007). Under *Toering*, a salt applicant must have a genuine interest in employment to keep his protection under the Act. Although Kent testified that he wanted and sought employment with the Employer, as demonstrated above, Judge Green sought to improperly influence and misstate witness Kent's testimony, to try to show that Kent did not have a genuine interest in employment, and regardless, could not hold two positions at the same time. In so doing, Judge Green acted not as a judge, but rather, again, as an opponent of salting.

In addition, the exchanges between the Judge and witness Kent establish that the Judge tried to act as an advocate for Respondent, rather than an impartial trier of fact. Judges "must refrain from impeaching or from examining witnesses to the extent that he takes out of the hands of either party the development of its case." *Indianapolis Glove Company*, 88 NLRB 986, 987 (1950) (fn citations omitted). The appearance of partiality is to be avoided, and the trier of fact crosses that line when he "assumes[s] the role of an advocate in attempting to impeach [the witness's] prior testimony." *Better Monkey Grip Company*, 113 NLRB 938, 939 (1955) (where the Board found that it appeared that "Respondent did not have a complete and impartial hearing." Id.) Judges may certainly interrupt and question witnesses, but they may not slant the record by doing so. See: *Honaker Mills*, 789 F.2d 262, 265 (4th Cir. 1986). Here, as illustrated by the above exchanges, Judge Green was slanting his questioning to elicit testimony to impeach the witness's earlier testimony. It is obvious that Judge Green did this in order to justify his own pre-existing and implacable belief that Kent could not possibly have

worked for Respondent. Rather than clarifying the record, Judge Green framed the evidence in order to buttress his long held belief that salts do not intend to obtain employment from the target employer.

(c) Judge Green Threatened Not to Allow General Counsel's Witnesses to Testify Unless Digital Recordings of Conversations with Respondent's Representatives Were Produced by The Union Prior to their Testimony.

The Judge, in an off-the-record conversation,[1] also ordered that Counsel for the General Counsel provide recordings of taped conversations made by the employee applicants with representatives of Respondent, prior to the witnesses' testimony, and under the explicitly stated threat that should Counsel for the General Counsel not comply, the salting witnesses would be prevented from testifying. General Counsel Crovella requested an immediate recess to discuss this matter with Regional management, and when she returned to the hearing room, she learned that the Judge had directed Respondent to handwrite a subpoena to the Union, demanding the recordings.

First, it is inappropriate to require the Union to produce evidence to Respondent when it had competent counsel who had not previously attempted to subpoena any documents from the Union. While one of the General Counsels took a short break from the hearing to determine what Regional management thought was the best course of action to take, the Judge instructed Respondent to request a subpoena which he promptly granted and handed over to the Union with no recourse but to file a petition to revoke.

Second, the Judge, by, conditioning General Counsel's ability to call witnesses and present its case upon the Union's production of the recordings, put Counsel for the

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[1] Counsel for the General Counsel mistakenly believed that these comments were made on the record and thus did not ask Judge Green to repeat it for the record.

General Counsel in the untenable position of interfering with the Union's right to file a petition to revoke, or forfeit half of General Counsel's case. See: Board's Rules and Regulations Section 102.31(b) "Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena." Also see: *Canova v. NLRB*, 708 F.2d 1498, 1503 (9th Cir. 1983) (where the 9th Circuit held that "the administrative law judge should have issued the subpoena and awaited a petition to revoke" in a case where it was clear the information subpoenaed was not likely available).

Third, the Judge's actions in advising Counsel for Respondent to request and serve a subpoena for the digital recordings, precluded any fair determination on a Petition to Revoke. It would be unlikely that the same person who instructed Respondent to subpoena the material would then quash its production. Thus, the Judge's actions have destroyed any appearance of impartiality with regard to this issue or the ability to fairly decide the issue of the appropriateness of the subpoena.

Bias and prejudice, "can also be applied when a judge's conduct , for whatever reason, 'precluded a fair determination' of the merits," *Dalton Power & Light Company,* 267 NLRB 202, 203 (1983). Indeed, any argument that the judge was simply trying to expedite the hearing must also fail, because "judges may not in the process preclude parties from presenting evidence that will allow a 'fair determination' of the issues." *Dayton Power & Light Co.,* 267 NLRB 202 (1983). While this conduct alone may lead to disqualification, viewed as a whole, the conclusion is inescapable. Clearly, such a threat cannot be condoned and taints any decision rendered by this Judge. By putting General Counsel in the position of providing the recordings or not being a allowed to present any of its evidence regarding the portion of its case that concerns the salts, Judge Green

tried to preclude Counsel for the General Counsel from presenting evidence that would allow a 'fair determination' of the issues. (supra, 267 NLRB 202).

(d) Judge Green Inappropriately Assisted Respondent by Directing Respondent to Subpoena the Recordings.

It should be further noted that Judge Green's instruction to Respondent to subpoena the recordings from the Union, when it did not occur to Respondent's Counsel to do so, is a glaring example of the Judge offering improper assistance to Respondent's counsel. The Board has found it improper for a judge to suggest that counsel 'maintain a reasonably militant posture regarding the relevancy of this material.' *Reading Anthracite Co.* , 273 NLRB 1502, (1985). Here, although occurring in an off the record discussion, in front of the attorneys and parties' principals, Judge Green instructed Respondent's counsel to request and draft a subpoena seeking the digital recordings which he immediately approved. The subpoena was then immediately served on the Union, offering no time for a Petition to Revoke. This all occurred while waiting for one of General Counsel's attorneys to return from a consultation with Regional management. Counsel for the General Counsel submits that this was done in an effort to bypass Judge Green's own earlier ruling and threat, and to thwart General Counsel's efforts to obtain a fair hearing. This is certainly akin to suggesting a "militant posture" (Id.), but instead of it being in regard to the relevancy of evidence, it is in regard to prematurely obtaining evidence despite the Board's Rules and Regulations governing subpoenas. Directing Respondent to subpoena recordings at trial without allowing time for a petition to revoke is **not** similar to suggesting a line of questioning. *Teamsters Local 722(Kasper Trucking)*, 314 NLRB 1016, 1017 (1994). Unlike the *Teamsters Local 722* case, his instruction here to Respondent counsel did not involve "general background evidence," but an integral part of General Counsel's case, the sequence of which should have been determined by proper foundation and introduction of evidence as General Counsel

planned and attempted to do. By advising Respondent's counsel to obtain the recordings, the Judge not only gave improper assistance to Respondent's counsel, but further displayed his preconceived opinion on the "salting" portion of General Counsel's case by trying to eliminate General Counsel's use of the recordings for impeachment purposes. Based on the Judge's action, General Counsel had to release a 611(c) witness from testifying, because the recordings were going to be used to impeach her testimony regarding the Respondent's refusal to let overt salts apply for work. This improper assistance is further proof of the Judge's bias and his intentional interference with the General Counsel's presentation of its case.

(e) Judge Green Interfered with General Counsel's Spanish-Speaking Witness, Further Illustrating His Lack of Impartiality.

The Judge, over Counsel for the General Counsel's repeated objections, ordered that a Spanish-speaking witness, who was using an interpreter, respond in English to English questions. This occurred after several attempts by Respondent's counsel to have the Judge order the witness to respond in English. The Judge indicated that if the witness testified through an interpreter, the Judge's credibility findings with regard to the witness could be affected. (Tr. 450, lines 7-19). While the use of interpreters can be regulated by the Judge, such as "when alleged threats are made in English," and it is acknowledged that in those limited circumstances that "the witness should be able to recount what was said in English," here, the witness was not testifying to any threats that were made, and throughout his testimony demonstrated a lack of understanding of English. *Yaohan U.S.A. Corp.,* 319 NLRB 424, fn 2 (1995), enfd. mem. 121 F.3d 720 (9th Cir. 1997).

As early as eight pages into the testimony of General Counsel's Spanish-speaking witness William Dominich's testimony, Respondent's counsel interrupted direct examination and asked, "Why are we using an interpreter?" (Tr. 419, lines 1-2). Judge

Green responded at the time by asking the witness if he was comfortable talking in English, and the witness responded, "No." (Id., lines 6-8). He then followed up by asking the witness if he understood and could speak English, to which the witness replied, "Yes," and, "A little bit." At that point, Judge Green allowed the witness to continue using the translator, but stated that his position on the issue "may change." (Id., 13-17).

Another 28 pages into the witness's testimony, when he was describing a conversation that the witness had with a manager about his suspension, the Judge interjected, "Were you talking in English or Spanish?" The witness replied that they were speaking in Spanish, and then he stated that when he worked at Respondent's company with his usual team, they all spoke Spanish. (Tr. 447, lines 14-22). A mere page later, Respondent's counsel again interrupted, stating that he would "like him to testify in English what was said...." (Tr. 448, lines 21-22). General Counsel started to object, and was cut off by the Judge who then started questioning Respondent's counsel about whether there was a recording made of the conversation. (Tr. 448-449, lines 25, and 1-25). After the Judge stated to Counsel for the General Counsel that he could proceed with the witness, the Judge stated:

> All right. I'm going to allow him to talk in Spanish. But it's going to affect—it may or may not, it may possibly affect whether or not in my ultimate conclusion as to what, to what degree, how much weight I'm going to give this and how much weight of how I'm going to judge this. I don't know yet, because I really haven't heard all the evidence. But during this meeting that you had in the office, was there anybody there who did translating? (Tr. 450, lines 7-19)

The witness responded, "No," to the Judge's question. The witness was not testifying as to any 8(a)(1) conduct that occurred at the meeting. He had attempted to state in English what he understood the conversation to have been, and he told the Judge the conversation was not only kept simple, with yes and no questions only, but that management had a computer on which they may have been either recording or making notes of the conversation. (Tr. 452) It should be noted that Respondent had Al

Guerrero, a Spanish-speaking manager, available in the building, who it has used to translate to its workforce. However, Respondent chose not to have Mr. Guerrero translate for Mr. Dominich about the investigation of the events surrounding his suspension, and instead, made him respond in English to English-posed questions.

Although the witness had already been subjected on direct testimony to responding in English to this non-8(a)(1) conversation that Respondent chose to conduct in English when an interpreter was available (Tr. 448), he was forced, again, on cross-examination, to repeat the testimony in English, without the assistance of the translator. (Tr. 506) While recognizing that a witness should testify in English to an English conversation, if capable, this was not a situation like the one in *Yaohan U.S. A. Corp.,* where threats were made in English, making the value of the English version clear. There was no reason to subject the witness to repeatedly testifying in English to English questions when he was not testifying about threats. A review of the witness's testimony at Transcript pages 506-509 shows that the reporter was unable to decipher what the witness was saying, and his responses in English about what management said to him make it clear that his ability to speak the language is limited. As the Judge already stated on the record, this inability to fluently state, in English, a conversation that does not violate any section of the Act, will be used by the Judge to weigh the witness's credibility. This is an unconscionable display of Judge Green's pre-judgment of the case. If the Judge intends, as he intimated, to give less weight to or discredit witnesses who speak and/or understand some English but opt to use interpreters to fully understand the questions asked of them, then General Counsel has no hope of receiving a fair and impartial decision.

Conclusion

In sum, based on Judge Green's history regarding salting cases, his multiple admonishments from the Board concerning his findings in these cases and his behavior at the hearing, Counsel for the General Counsel believes that Judge Green cannot render an impartial decision. Accordingly, Counsel for the General Counsel, by the undersigned, hereby moves that Judge Green be disqualified from serving as the trial judge in this matter.

Dated at Brooklyn, New York, April 9, 2008.

Linda Harris Crovella
Counsel for the General Counsel
National Labor Relations Board, Region 29
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Q It sounds like at one point the woman offered to keep an application on file; did you fill out an application?
A No, I didn't.
Q Okay. And why not?
A You know, it seemed to me like it wouldn't have served a purpose, it seemed to me that she wasn't going to call me back.
MR. R.M. ZISKIN: Objection.
JUDGE GREEN: Yeah, all right, fine, I'll -- you know, it's -- I note your objection.
You testified about it, it's your opinion, it's fine.
THE WITNESS: That's why --
BY MR. CHILDERHOSE:
Q Did you see any applications? Was she holding applications?
A No, no.
Q Would you have accepted a job had it been offered?
A Yes.
Q And how long did you intend to work at All State had you been offered a job?
A I would have worked for as long as I had to.
Q What do you mean "as long as you had to"?
A Well, there was an organizing drive with All State for -- the Local was conducting an organizing drive of All State Power-Vac, to organize All State Power-Vac so at that point

JUDGE GREEN: Okay.

BY MR. R.M. ZISKIN:

Q How many times have you applied for a job as a salt?

A This one time.

Q In the last four years have you had any other employment other than your employment with Laborers Local 78 or the related unions?

A No.

MR. R.M. ZISKIN: I have no further questions.

Let the record show that I'm returning the affidavit.

REDIRECT EXAMINATION

BY MR. CHILDERHOSE:

Q Mr. Kent, had you been given an application for the field technician position that morning what would you have done?

MR. R.M. ZISKIN: He's asked and answered already.

JUDGE GREEN: Yeah, but he didn't take --

MR. R.M. ZISKIN: He already -- he's already answered that he would take it. He's already testified --

JUDGE GREEN: It's a hypothetical.

All right, I'll allow him to give his opinion about it but his opinion is going to be contrary to what his testimony is.

MR. R.M. ZISKIN: He's already testified --

MR. CHILDERHOSE: His intent.

JUDGE GREEN: His intent was not to take it; that's what

he said.

MR. CHILDERHOSE: I don't think that's his --

JUDGE GREEN: All right, you can ask him. Fine.

MR. CHILDERHOSE: I don't think that's his testimony.

JUDGE GREEN: Well, okay, you don't think it is.

BY MR. CHILDERHOSE:

Q Did you intend to apply for a job that morning?

A I intended to apply for a job.

Q So tell us why you did not apply for a job?

A Why did I not?

JUDGE GREEN: No, no, you're asking the wrong question. He did apply, he did in a sense apply but you're question is more specific, I think, which is --

MR. CHILDERHOSE: Okay.

JUDGE GREEN: -- how come he didn't take up the offer to fill out an application for future reference? See the -- is that what you're talking about?

MR. CHILDERHOSE: I mean, I think I had asked that on direct.

JUDGE GREEN: Yeah, okay.

MR. R.M. ZISKIN: You did.

JUDGE GREEN: Right, you did and he decided -- he thought that she was kidding, that she wasn't serious.

BY MR. CHILDERHOSE:

Q Did she give you an application?

A All right? He was the one who was running that.

Does that answer your question?

JUDGE GREEN: Yeah, I think it does.

Does that answer your question? Okay. My question was and it may -- I don't know, we -- were you -- do you get together with Mr. Silva to, sort of, exchange ideas about organizing, to, you know, plan out policies -- you know, general polices, not necessarily to this company but you know, talk about it?

THE WITNESS: Actually at the time not as much as -- yeah, there was -- he was aware of our organizing efforts in asbestos and I was aware, to a certain degree, of the organizing efforts in All State Power-Vac.

JUDGE GREEN: Okay.

THE WITNESS: And there was definitely some -- there was some exchanging of ideas but I would say it was limited.

JUDGE GREEN: Okay, fine.

THE WITNESS: Depends -- does that make sense?

JUDGE GREEN: Yeah, all right. I take it you didn't -- that you were not offered to take a leave of absence if you got this job at All State? Nobody offered to say, you know, "Well, if you go and work at All State I guess you're not going to be doing your other job at the Union?"

THE WITNESS: Yeah, nobody said that. It was just -- I mean, I was there under the assumption that had I got hired.

You know, I can't say that no one said that, but I was there under the assumption that had I gotten hired, if they wanted to put me to work that the Union would have -- that I would have gone to work for All State Power-Vac.

JUDGE GREEN: Okay.

DIRECT EXAMINATION (continued)

BY MR. CHILDERHOSE:

Q But the two aren't exclusive; are they?

JUDGE GREEN: Yeah, they sure are, if he's busy at one job and you know, there's only so many hours in a day, in a week.

MR. CHILDERHOSE: If his job is to organize and he's being an organizer taking a job somewhere else he's not quitting being an organizer, he's still the Union organizer.

JUDGE GREEN: Yeah, but as I understand his testimony he was involved more deeply and pretty involved in the asbestos industry.

MR. CHILDERHOSE: Let's ask the Witness if he had to resign from being an organizer to take a job elsewhere I don't think that's accurate.

JUDGE GREEN: Okay. Well, I asked him whether or not he had to take a leave of absence and he said he didn't know. Maybe it wasn't even talked about.

MR. CHILDERHOSE: Well, let's ask him.

DIRECT EXAMINATION (continued)

Now, obviously if he had -- if he was clear and if the Union had made it clear that he was going to suspend all his activities in another industry and just work at All State then I suppose that that would be -- that would not be mutually exclusive.

MR. CHILDERHOSE: I believe --

JUDGE GREEN: But you know --

MR. CHILDERHOSE: -- Your Honor --

JUDGE GREEN: -- and I gave him the opportunity to say that he was willing to suspend all his operations and organizing in the asbestos industry.

MR. CHILDERHOSE: You restated Mr. Kent's testimony, we believe, inaccurately --

JUDGE GREEN: Then the record --

MR. CHILDERHOSE: -- and in a prejudicial way.

JUDGE GREEN: Then the record will state what he said and I rule on what the witness says and what the record shows.

The other problem with Mr. Kent's testimony is that he basically refused to give an application, but that's neither here nor there, I'm not ready to rule on Mr. Kent's situation as to whether or not the Employer refused to consider him for employment.

MR. CHILDERHOSE: I don't think Mr. Kent did refuse to give an application and I don't think a fair --

JUDGE GREEN: Well, then you're mischaracterizing his --

MR. CHILDERHOSE: I don't think it's appropriate that that conclusion's already been reached.

JUDGE GREEN: But that's on the --

MR. CHILDERHOSE: I think it was reached prior to --

JUDGE GREEN: -- that's on the recording. Isn't it on the recording?

MS. HARRIS-CROVELLA: I think that's --

JUDGE GREEN: Did she said, "You can file -- you can file now an application for future employment if you want," and --

MS. HARRIS-CROVELLA: She said, "Well, I don't know what I'll do with it but," and then she didn't give him one.

MR. CHILDERHOSE: He didn't refuse to apply.

MS. HARRIS-CROVELLA: He did not refuse to fill out an application.

JUDGE GREEN: I guess the question is what do you mean by the word "refuse"?

MR. CHILDERHOSE: Mr. --

JUDGE GREEN: You have it made, do you want me to get -- step -- not hearing this case?

MR. CHILDERHOSE: Of course they don't, they love you, you're on the same team, that's our point.

JUDGE GREEN: You know --

MR. R.M. ZISKIN: That's really offensive, how could you possibly say that?

MR. CHILDERHOSE: In regard to the salt --

2007 at All State Power-Vac?

A The reason why I did not complete an application is because she had -- the lady with whom I was talking at All State Power-Vac had from the very beginning had encouraged us to come back. Or I shouldn't say that, had encouraged -- had informed us that we could -- she would not accept applications at that point, that we had to come to back, that we didn't have the documentation that, that we did not -- that she didn't have any jobs available for us at that time. I mean, several questions had led up to that. And --

Q Did you ever see physically an application?

A No, there was never an application to give to us.

Q Did you refuse to fill out an application?

A No.

MR. CHILDERHOSE: No further questions.

MR. R.M. ZISKIN: Thank you.

CROSS-EXAMINATION

BY MR. R.M. ZISKIN:

Q Since you last testified earlier this afternoon have you spoken with counsel for the General Counsel about your testimony?

A No.

Q Have you spoken with Mr. Silva --

A No.

Q -- regarding your testimony?

A No, there was no applications nowhere. There was papers on the wall but that's it. But no.

Q Did you refuse to fill out an application?

A No, we did not. We never refused.

Q And Eli Kent was your partner you said?

A Yes, he was.

Q Did he refuse to fill out an application?

A No, we did not.

Q Was a recording made of this conversation -- of your conversation at All State?

A Yes, it was.

Q Had you been offered a position with All State would you have taken it?

A Absolutely.

Q Had you been given an application that morning would you have filled it out?

A Yes, I would.

MR. R.M. ZISKIN: Asked and answered.

JUDGE GREEN: Overruled.

BY MR. CHILDERHOSE:

Q Do you remember what you were wearing that morning?

A I got a jacket -- got a green jacket, a Union jacket with yellow letters and I got blue jeans.

MR. CHILDERHOSE: Okay, no further questions.

MR. R.M. ZISKIN: Do you have an affidavit for the

P R O C E E D I N G S

(Time Noted: 9:30 a.m.)

ADMINISTRATIVE LAW JUDGE GREEN: On the record.

I've handed to the counsel what I believe is a list of every salting case I've ever had in which I wrote a decision. It doesn't count all the cases I've decided, which I wouldn't remember anyway. This gives me a slight opportunity to express my disagreement with the comments made by the Board majority in M.J. If my memory serves me correctly, and it may not, the Sheet Metal Workers in that case had adopted the International Brotherhood of Electrical Workers salting program and manual. That manual was received in evidence and quoted at great length in Sullivan Electric, which is a JD decision, which is listed. So the conclusions that, assuming again for the sake of argument that I'm correct that the Sheet Metal Workers had adopted the IBEW salting manual, my speculations were based on facts. They weren't based on speculations. That's my opinion.

I have really no particular desire to hear this case. It's a long case. It'll take me a long time. I don't like long cases. And it probably will involve credibility issues, and I always feel uncomfortable about deciding who is telling me the truth and who isn't telling me the truth. However, I don't think that's my responsibility to, to refuse to hear cases because they are inconvenient for me.

So, you know if both parties agree that they would rather

have a different judge in this case, that's fine with me. I, you know, I have no stake and no interest in particular about this case. Now what I'm going to do is after we finish on Thursday, we're going to postpone this thing till April 8th, which will mean, number one, that I can hear the other cases assigned to me next week. And, number two, it'll give all, you know, the parties an opportunity, number one, to look at the transcript and, number two, to perfect whatever appeal they wish to make to the Board. It will also give the Board -- the Board, I guess the two-member Board, the opportunity to decide what they want to do with this. And whatever they decide is fine with me.

With respect to Mr. Kent, my present feeling, and I think it's the same feeling that I have presently as I had yesterday, is that based solely on his own testimony, if he had accepted full-time, indefinite employment with All State, the probability is very small that he would have been able to complete or continue his functions in his present assignment as the director of organizing in a separate industry, namely the asbestos removal industry. Now, of course, you know, it may very well be that the Union would rather have him working at All State than try to organize the asbestos industry, which as he testified was a rather important job. But I just think it's not all that probable. I feel that way today and I feel that way yesterday. I, frankly, don't know what I said in the transcript. With

MR. ROBERT ZISKIN: Excuse me. Why are we using an interpreter?

UNIDENTIFIED SPEAKER: Well, if he can read English, Your Honor.

JUDGE GREEN: Well, I don't know how much -- this is something that maybe he's more familiar with. Are you comfortable talking in English?

THE WITNESS: No.

JUDGE GREEN: Do you understand English?

THE WITNESS: Yes.

JUDGE GREEN: Can you speak English?

THE WITNESS: A little bit.

JUDGE GREEN: All right. Look, I'm going to allow him to talk through the interpreter. He's more comfortable. There may come a point in time, depending upon what he's asked, where that may change. But, at the moment, I don't see any reason why he can't testify through a translator.

BY MS. HARRIS-CROVELLA:

Q Mr. Dominich, can -- I'll ask you again, you read it, but what I asked is can you tell us what General Counsel's Exhibit -- what is this -- 25 is?

MR. ROBERT ZISKIN: Objection.

JUDGE GREEN: He just read it. It is what -- he just read it. He doesn't need to interpret it.

MS. HARRIS-CROVELLA: Well, he did need an interpreter,

Q Did Mr. Guerrero tell you --

JUDGE GREEN: What, if anything, did Mr. Guerrero say to you during this meeting?

THE WITNESS: With regard to my suspension, that they hadn't been equitable, that why was I suspended and the other person hadn't been suspended.

JUDGE GREEN: And who is the other person?

THE WITNESS: Felix Rodriguez.

JUDGE GREEN: Oh, okay.

BY MS. HARRIS-CROVELLA:

Q And what was his response?

A There was none. That was a problem with the company, it was said.

JUDGE GREEN: Were you talking in English or Spanish?

THE WITNESS: Spanish.

BY MS. HARRIS-CROVELLA:

Q Mr. Guerrero speaks Spanish, as well as Hector Solera, right?

A Yes, correct.

Q And when you worked on your team with Rafael Bisono, and Hector Solera, and yourself, what language did you speak?

A Spanish.

Q After sitting in Mr. Guerrero's office talking with him and Hector Solera, who, who left the room first to go to Glenn Burke's office?

A Mr. Hector Solera.

Q And how long was he gone for?

A How long was he gone?

Q How long was he -- did you see him again, after he left to go to Burke's office?

A Of course, after he came out.

Q And when did he come out?

A He didn't say anything to me.

Q No, when, quando (ph.), when did he come out?

A About forty-five minutes from the meeting.

Q And after he came out, did he say anything to you?

A He didn't say anything. And then it was my turn. I was second.

Q And when you went into Mr. Burke's office, who was there?

A Mr. Curtis Ross.

Q And was Mr. Burke there?

A Yes.

Q And was anyone there to translate?

A No.

Q Who did the speaking at the meeting?

MR. ROBERT ZISKIN: At this point, I'd like him to testify in English what was said, if they spoke to him.

JUDGE GREEN: All right. To the extent, if you can testify as to -- if you can --

MS. HARRIS-CROVELLA: I would object, Your Honor. The

JUDGE GREEN: All right, fine. Could you please go again with the -- where was I up to? Did you understand the questions posed to you?

THE WITNESS: Yes.

JUDGE GREEN: And was that because -- I think you said that they were simple -- they tried to make it in simple language?

THE WITNESS: Yes.

JUDGE GREEN: Okay. All right. I'm going to let him speak in -- use the interpreter. Did you give any answers?

THE WITNESS: Yes and no.

JUDGE GREEN: Well --

THE WITNESS: Yes and no answers.

JUDGE GREEN: The ones that you gave yes, did you give those in English?

THE WITNESS: Yes.

JUDGE GREEN: Okay. Fine.

BY MS. HARRIS-CROVELLA:

Q Mr. Dominich, was someone -- was Mr. Burke or Mr. Ross writing down what you said?

A They had a computer and they were asking questions from it.

Q And did they tell you that they were using this computer to record your conversation?

A No.

A It was always Chris Ross.
Q And what did he say at the meeting?
A He was going to evaluate my participation in the problem.
Q And did he speak to you in Spanish or in English?
A English.
Q Tell us in English what he said to you?
MS. HARRIS-CROVELLA: Objection.
JUDGE GREEN: Can you, can you say what -- no. Can you, if you can, tell me what, in English what he said?
(Questions and answers proceed in English only.)
THE WITNESS: Yeah. He, he talking about I want to look in about your (indiscernible) in this case.
BY MR. ROBERT ZISKIN:
Q What else did he say?
A I say, okay, no problem (indiscernible).
Q So what else did he say to you in this, in the course of this meeting?
MS. HARRIS-CROVELLA: Objection. How long are we going to go on without using the translator.
JUDGE GREEN: We're going to go on for a while, you know.
MS. HARRIS-CROVELLA: Then I object on the record --
JUDGE GREEN: Well, it's very --
MS. HARRIS-CROVELLA: -- because this --
JUDGE GREEN: -- that you object.
MS. HARRIS-CROVELLA: -- this witness has stated twice on

the record now, Your Honor, that he is more comfortable speaking with a Spanish interpreter and that is his right --

JUDGE GREEN: I know. But you know something --

MS. HARRIS-CROVELLA: -- under the Board Rules and Regulations --

JUDGE GREEN: You know something --

MS. HARRIS-CROVELLA: -- to use an interpreter.

JUDGE GREEN: You know something, you're not supposed to be that comfortable when there is cross-examination. This is --

MS. HARRIS-CROVELLA: Excuse me?

JUDGE GREEN: -- cross-examination and --

MS. HARRIS-CROVELLA: He requested an interpreter.

JUDGE GREEN: I understand. But the conversation that took place in this office took place in English. It was not in Spanish. Neither the person from the management nor he spoke in Spanish. They both spoke in English. In order for me to evaluate whether or not, first of all, what was said and to evaluate what was said, I would like to hear him talk, talk about it in English, if he can. If you can respond in English, I'd like you to do so. If you need the help of a translator, just look at the translator.

MS. HARRIS-CROVELLA: I'd just like to state again for the record, for the record specifically that I think that this is highly irregular. I think that the witness has a right to have the Spanish translator translate for him. I think that it is an

incorrect ruling on your part and I take exception to it that --

JUDGE GREEN: Okay, fine.

MS. HARRIS-CROVELLA: That he should be forced to speak in English, when he has said that his first language is Spanish and he's more comfortable speaking in Spanish.

JUDGE GREEN: Okay.

MS. HARRIS-CROVELLA: And that shall be noted further in the special appeal.

JUDGE GREEN: Fine. Can you answer his question? Can you tell me what was said, and if you have trouble speaking or understanding his question in English, look at the reporter and he'll help you out.

BY MR. ROBERT ZISKIN:

Q Now let me ask a question. Mr. Dominich, what do you recall being said to you in that meeting by Mr. Ross?

JUDGE GREEN: Do you want him to try to speak in English?

MR. ROBERT ZISKIN: Yes, I want him to -- I don't want the translator.

JUDGE GREEN: All right. If you understand in English, then respond in English.

BY MR. ROBERT ZISKIN:

Q What did Mr. Ross say to you?

A I don't remember too much --

Q Whatever you remember.

A He told me about my responsibility in this case. But he

told me about the (indiscernible) ID (indiscernible) company ID, he want to (indiscernible) about how many (indiscernible) get it or what time the expiration, the date. I got -- I tell him I have one more year.

Q Okay. What else did he say to you in that meeting?

A About what is my, my position in this, in this company. I told him that I am driver operator.

Q Okay. And so you told him you were a driver operator?

A Yeah.

Q Okay. What else, what other questions did he ask you, as best you recall?

A About I doing the job, I doing the driving and operate to the truck, and helping something else, that's it.

Q Okay. What other questions did he ask you, as best you recollect?

JUDGE GREEN: If anything?

THE WITNESS: About you going to under the ground. I tell him, I tell him no (indiscernible).

BY MR. ROBERT ZISKIN:

Q Okay. So you told him you didn't do any work underground?

A No.

Q Okay, fine. Did he ask you any other questions that you remember?

A No.

Q Okay. Did he tell you in this meeting that you had been

JUDGE GREEN: All right, then you make an offer to employ all these guys as field guys, you put them in the manholes as part of your offer to settle this case. In any event, I mean --

MR. CHILDERHOSE: Your Honor, I don't disagree that back pay probably is an issue.

JUDGE GREEN: There's no issue, it's zero.

MR. CHILDERHOSE: But there -- in this whole case --

JUDGE GREEN: No, I'm talking about this particular part of the case.

MR. CHILDERHOSE: No, I agree, I agree with you.

JUDGE GREEN: What I'm saying is, we're spending a lot -- it's not directed to you personally, or to them personally. All I'm saying is, at this part of the case we're spending a lot of time on, and it seems to me that this aspect of the case is not going to go anywhere anyway.

As a practical matter we should be concentrating on Angel River, we should be concentrating on the three people who were discharged or suspended in October, and that's who we should be spending our time and efforts because that's where the real issues are involved.

MR. CHILDERHOSE: I agree, Your Honor, and I actually would say that those -- "the real issues", as you say. I don't think the dollar amounts are that high for all of this.

JUDGE GREEN: I agree with you, the dollar amount is not high for anybody in this particular case. You're absolutely